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Letter dated 2 June 2006 from the Secretary-General addressed to the President of the Security Council

Further to a request from the Security Council, please find attached a copy of the letter dated 21 May 2006 addressed to me by Sir Elihu Lauterpacht providing a report on the Eritrea-Ethiopia Boundary Commission's meeting of 17 May 2006 (see annex).

I should be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

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Annex

Letter dated 21 May 2006 from the President of the Eritrea-Ethiopia Boundary Commission addressed to the Secretary-General

Although the next quarterly report of the Eritrea-Ethiopia Boundary Commission is not due until the end of May, in view of the present concern of the Security Council with the problem of the demarcation of the boundary between Eritrea and Ethiopia, I wish to report without delay on the meeting that the Boundary Commission held with the parties in London on 17 May 2006.

The meeting was a follow-up to the previous meeting with the parties held on 10 March 2006. At that earlier meeting, the Boundary Commission emphasized to the parties that the demarcation process which the Commission had been obliged to suspend in late 2003 had to be resumed and completed without further delay. In stating this, the Boundary Commission was reflecting the concern shown by the Security Council, the African Union and other interested States at the possible deterioration in the situation due to the Boundary Commission being prevented from proceeding with the demarcation.

At those two meetings, the Boundary Commission proceeded on the basis that both parties were committed without condition or qualification to the full implementation of the Boundary Commission's delimitation decision of 13 April 2002. Neither party has disputed this.

At the meeting on 17 May 2006, the Boundary Commission informed the parties of its intention, as a first step in the resumption of the demarcation process, to proceed immediately to reopen the Boundary Commission's field offices in Addis Ababa and Asmara. Neither party expressed any disagreement with this step. Taken by itself, however, this step is only of formal significance. The offices have to be staffed, the surveyors have to be re-employed and contracts have to be concluded, initially with the companies that will prepare the boundary pillar sites and, without the same need for urgency, construct the boundary pillars themselves.

I wrote to you on 14 March and 4 May 2006 seeking your assistance in speeding up the process of making these employment and service contracts. On 18 April 2006 you told me that every effort would be made with United Nations procurement regulations to expedite the solicitation of a suitable contractor. However, there has been little, if any, improvement in the situation. Because of the procedures that some apparently believe must still be followed, it will not be possible to put surveyors in place for many weeks and the same is true for the contracts with the construction companies.

There are two further factors that impede progress. One is the re-establishment of arrangements to ensure security of the Boundary Commission's field personnel, its surveyors and the contractors. Without satisfactory safety arrangements, no one will work in the area. Both parties accept that the primary obligation to ensure the safety of personnel rests on them in respect of the areas in which each has control. Eritrea submitted a security plan as long ago as 14 October 2003, but it assumed that the United Nations Mission in Ethiopia and Eritrea (UNMEE) was operating normally and effectively, which, of course, is currently not so. Ethiopia has not yet submitted a plan, saying that it cannot do so until it knows what role UNMEE will

be able to play. The Boundary Commission, at the 17 May 2006 meeting, reiterated its request that Ethiopia produce by 19 May 2006 a security plan based on the assumption that UNMEE will be able to continue to play its part in the demarcation process on the same basis as it has hitherto.

In the period prior to the suspension of demarcation operations, UNMEE had played an essential role. The full resumption of this role as before is essential to the continuation of the demarcation. It includes the provision of the following services: the use of its helicopters for carrying surveyors to various parts of the boundary; likewise, its MEDIVAC helicopters must be available should medical assistance become necessary. Also, its forces must be available to supplement the protection afforded by the parties themselves and this requires freedom of movement on the ground. Mine clearance takes place under the UNMEE umbrella and once a pillar site has been cleared of mines, UNMEE must guard the site to ensure that it is not re-mined. The United Nations Mission in Ethiopia and Eritrea has also provided accommodation for the field offices. The Boundary Commission has been advised that any significant reduction in the size of UNMEE will seriously impair its ability to provide these essential services. In the discussion of these matters, the parties did not express any disagreement with this assessment of the role of and need for UNMEE. The representative of Eritrea said that she hoped that initially Eritrea would be able to withdraw those restrictions on UNMEE that bear on the work of the Boundary Commission and that subsequently it would be possible to deal with other items affecting UNMEE. She was asked to seek a decision from her Government by 22 May 2006.

At the meeting there was also some discussion of the extent to which any adjustment of the line of delimitation set out in the delimitation decision of 13 April 2002 could be made in the course of demarcation. The legal position as repeatedly stated by the Boundary Commission since the promulgation of its decision, is that there is no scope for adjustment of the line save in those few situations specifically mentioned in the decision and also in cases of "manifest impracticability". The Boundary Commission has made it plain that this expression relates to physical impracticability and does not cover situations where, for instance, the boundary divides a village. There is nothing exceptional or unprecedented in the division of villages by an international boundary.

Ethiopia, while accepting the Boundary Commission's April 2002 decision as final and binding, appeared to take the position that if, in the process of demarcating the delimitation line, difficulties were to arise they could only be resolved by negotiations between the parties. The implication of this position could be that any decision of the Boundary Commission on demarcation with which Ethiopia does not agree may not be treated by it as binding.

In paragraph 16 of article 4 of the Algiers Agreement, the parties requested the United Nations to facilitate resolution of problems that may arise from the transfer of territorial control. Such problems in the Boundary Commission's view may include the consequences of division of villages by the delimitation decision. The parties are of course also free to resolve these problems at the political level, but in any case they fall outside the scope of the Boundary Commission's jurisdiction.

The Boundary Commission has had the assistance of a special consultant and may possibly appoint an additional one. Draft terms of reference for the special consultants include the procedure to be followed in their work. These terms of

reference were presented to the parties and were the subject of discussion. The Boundary Commission requested the parties to submit in writing their comments on the draft terms of reference and may amend them in the light of such comments.

The second factor that must be borne in mind is the need for assurances regarding the funding of the operation. The costs of demarcation must be met out of the United Nations Trust Fund. At present, the Trust Fund totals approximately $3.3 million. To complete the operation at least $10 million is required. In the absence of assurances that this sum will be available, the contractors will be unwilling to conclude agreements.

The net result of the meeting is that demarcation will resume as soon as:

(a) The Commission can be assured that UNMEE will be retained in the area at a level sufficient to enable it to continue to provide the services to the field staff on at least the same scale that it has hitherto;

(b) The parties can provide or, if already provided, confirm their proposed security arrangements;

(c) Contracts can be concluded with the surveyors and the on-site contractors;

(d) And, most important of all, both the parties should cooperate fully with the Boundary Commission's representatives in the field. Lest there be any misunderstanding, it must be said that, as yet, it is not clear that the parties are prepared to do this.

(e) The Boundary Commission has set 15 June 2006 for a further meeting with the parties in the hope that this will help to develop the momentum.

(*Signed*) Sir Elihu **Lauterpacht**